

CITY OF CHERRYVALE  
ORDINANCE 18-4605

AN ORDINANCE AMENDING ORDINANCE 11-4605, ARTICLE 1. ANIMAL CONTROL AND REGULATIONS OF THE CITY CODE FOR THE CITY OF CHERRYVALE, KANSAS.

**2-101 DEFINITIONS.**

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context indicates a different meaning:

- a. **Animal** means any live, vertebrae creature, domestic or wild, other than humans, and including all fowl, fish, and reptiles.
- b. **Animal Control Officer** means the person duly authorized by the City Administrator to perform the duties authorized by this chapter or any law enforcement officer who may act through the Chief of Police to perform any duty under this ordinance unless otherwise specifically stated.
- c. **At Large** means that the animal is off the premises occupied by the owner (or its appointed keeper) and not under the immediate control and supervision of its keeper, the owner, his agent, or some member of any such person's family.
- d. **Cat** means any member of the Felis Catus Family, male or female, regardless of age.
- e. **Cattery** means any establishment where more than four (4) purebred cats, registered under any nationally recognized cat fancy group, society, or association, are kept as a hobby or profit, where the breeding of such animals is for the improvement of the breed, and where such cats are kept in a specific, indoor, enclosed area at all times.
- f. **Commercial Animal Establishment** means any pet shop, grooming shop, auction, riding stable, guard dog service, kennel, hobby breeder, cattery, animal shelter, other than that operated by the City, animal hospital, business keeping animals in stock for retail or wholesale trade, or any establishment performing one or more of the principal activities of the aforementioned establishments.
- g. **Confiscate** means to seize an animal and take permanent custody.
- h. **Dangerous Animal or Dog** means and includes any wild mammal, reptile or fowl, which is not naturally tame or gentle, but is of a wild nature or disposition, and which, because of its size, vicious nature or other characteristics, would constitute a danger to human life or property; or

Any animal which behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of serious injury or death to one or more persons or domestic animals; or

Which, without provocation, bites a human being or domestic animal; or

Any animal having a known disposition or propensity to attack, bite, or injure any person or animal without provocation. Where the official records of the animal control officer, city clerk, police department, or clerk of the municipal court indicate that an animal has bitten

or attacked any person or animal, it shall be prima facie evidence that the animal is a dangerous animal; or

Any animal owned or kept primarily or in part for the purpose of fighting or any animal trained or bred for fighting; or

Any animal which is urged by its owner or keeper to attack, or whose owner or keeper threatens to cause such animal to attack, any law enforcement officer while such officer is engaged in the performance of official duty and when such animal has the apparent ability to cause injury or harm to such officer; or

Notwithstanding the definition of a "dangerous dog" herein, when determining whether a dog is dangerous pursuant to this Code, the court may consider as mitigating factors whether any injury or damage is sustained by a person or animal who, at the time such injury or damage was sustained, was committing a willful trespass or other tort upon premises owned or occupied by the owner of the dog; was teasing, tormenting, abusing, or assaulting the dog; was committing or attempting to commit a crime; or whether the dog was protecting or defending a human being within the immediate vicinity of the dog from an unjustified attack or assault. The definition shall not apply to police dogs.

- i. **Dog** mean both male, female, and neutered dogs and such members of the canine, vulpine, lupine, and jackal families, and the young of all such species.
- j. **Domestic Animal** means any animal customarily kept as a pet or any animal maintained within, or as an adjunct to, any domestic household.
- k. **Exotic Animals** means any pet introduced from another country or area, not indigenous to the place where found, or strikingly or excitingly different or unusual.
- l. **Fowl** means a bird of any kind.
- m. **Hobby Breeder** means any person who owns more than four (4) purebred dogs over five (5) months of age; where such dogs are habitually lodged or fed within such person's house, or premises, for the purpose of improving the breed, and who raises no more than two (2) litters of pups per year.
- n. **Household** means all persons living in the same dwelling unit.
- o. **Humanely Euthanize** means the proper injection of a substance that quickly and painlessly terminates the life of an animal, or any method approved by the American Veterinary Medical Association of the American Humane Society.
- p. **Impoundment** means the taking into custody of an animal by a law enforcement officer, Animal Control Officer, or any authorized representative thereof.
- q. **Kenel** means any premises upon which five (5) or more cats or dogs are kept, boarded, bred, trained for a fee, bought, and/or sold, except for commercial animal establishments otherwise enumerated in this chapter.
- r. **Large Animal** means any swine, bovine, horse, mule, donkey, and other equine, goat, sheep, beast of burden, or any other domestic or wild animal of similar or larger size.

- s. **Livestock** means any animal owned, kept, or maintained for the purpose of supplying food, directly or indirectly, or as a beast of burden, and specifically includes cattle, horses, sheep, goats, asses, mules, rabbits, and fowl, or any kind or breed of animals utilized for sport or food.
- t. **Muzzle** means a mouth guard made to prevent an animal from biting and shall be made of leather, nylon, or steel.
- u. **Neutered** means any male or female cat or dog that has been permanently rendered sterile.
- v. **Owner** means any person who feeds or shelters any unowned animal for twenty-four (24) or more consecutive hours or who professes ownership of such animal. If a minor owns an animal, then any household head of which such minor is a member shall be deemed the owner of such animal under this chapter and shall be responsible as the owner, whether or not such household head is a minor. If not a member of a household, such minor shall be directly subject to the provisions of this chapter.
- w. **Premises** means any parcel of land and any structure(s) thereon in which any animal regulated by this chapter is housed and/or confined.
- x. **Public Nuisance Animal** means any animal that unreasonably annoys humans, endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property. The term public nuisance animal shall include but not be limited to:
  - 1. Any animal that is repeatedly found running at-large; or
  - 2. Any animal that makes excessive noise. Refer to Section 2-118.
- y. **Registration Tag** means any system of animal identification approved by the City Administrator which does not involve alteration or permanent marking of any animal.
- z. **Residential Structure** means all or part of any building which contains one or more dwelling units, including single-family dwellings, two-family dwellings, multiple-family dwellings, lodging houses, mobile homes, dormitories, sororities; and fraternities.
- aa. **Small Animal** means any animal not within the definition of large animal, but including all dogs without reference to size.
- bb. **Summons** means a notice of violation requiring the accused to appear before the Municipal Judge, to answer the charges of violation of this chapter.
- cc. **Tether or Tethering** means when used as a verb, means fastening a dog or cat to a stationary object, pulley run line or stake, and when used as a noun, means a chain, leash, rope, cable, string, leather, or nylon strap, or any other material used to fasten a dog or cat to a stationary object, pulley run line, or a stake.
- dd. **Under Restraint** means an animal secured by a leash under control of a person physically capable of restraining the animal or securely enclosed within the real property limit of the owner's premises.

### **2-102 PENALTIES.**

Whenever, in this chapter, any act is prohibited or is declared to be unlawful or the performance of any act is required or the failure to do any act is declared to be unlawful and no specific penalty or penalty range is provided by another subsection of this section, the violation of any provision in this chapter shall be considered a Class A misdemeanor. Each day any violation of this chapter continues shall constitute a separate offense.

### **2-103. DUTIES OF THE CITY ADMINISTRATOR.**

Except where otherwise provided, it shall be the duty of the City Administrator, to administer and enforce the provisions of this chapter directly and or through staff assigned. The Chief of Police or his/her designee shall keep a record of all enforcement and investigative activities. The City Administrator is authorized to develop administrative regulations necessary to implement the provisions of this chapter, including procedures for animal enumerations, animal shelter operation, and such other fees required by this chapter but not specified herein.

### **2-104 DUTY OF THE POLICE DEPARTMENT.**

It shall be the duty of the police department officers to enforce the provisions of this chapter and any regulations issued by the City Administrator and to assist the Animal Control Officer in enforcing the provisions of this chapter.

### **2-105 ENFORCEMENT PROCEDURE.**

- a. The Animal Control Officer and any police officer are hereby authorized to issue a summons to the owner of any animal in violation of any provision of this chapter. Such person may retain possession of the animal if it is the belief of the officer issuing such summons that such possession is not in conflict with any other provisions of this chapter.
- b. The Animal Control officer and any police officer are hereby authorized to take up and impound any animal in violation of any provision of this chapter if the person owning such animal cannot be issued a summons because such person is not known or not present. Such animal shall be confined in a humane manner and shall be released upon satisfactory proof that the party claiming the animal is entitled to possession thereof, and upon payment to the animal shelter of all recovery fees established by the animal shelter or animal hospital. The fees shall be subject to the approval of the Governing Body of the City of Cherryvale by separate ordinance.
- c. In the interest, of animal welfare, any person owning any animal in the City by so doing does thereby authorize the Animal Control Officer or any police officer to enter upon private property, other than within any residence, where such animal is kept, if the officer has probable cause to believe the animal is being kept in a cruel or inhumane manner, for the purpose of examining such animal and impounding, such animal at the animal shelter when, in said examiner's opinion, it is being kept in an unlawfully cruel or inhumane manner.
- d. Any animal that has bitten a person may be removed from the property of its owner by the Animal Control Officer or any police officer, if such animal is in violation of examination or observation requirements prescribed by this chapter.
- e. The Animal Control Officer and any police officer are hereby authorized to use humane live traps or tranquilizer guns to capture any animal whose presence on private or public

property constitutes a nuisance to persons. In the event there is a threat to the public health or the health of domestic animals, the Chief of Police may authorize other means to capture or destroy animals deemed to be dangerous.

- f. It is unlawful for any person to interfere with the duty of the Animal Control Officer or any police officer by removing, causing to be removed, the identification tag of any cat or dog without the consent of the owner thereof; refusing to identify himself upon the request of the Animal Control Officer or any police officer when such officer has probable cause to believe that such person has violated this chapter; or in any other manner preventing the lawful discharge of enforcement duties prescribed by this chapter.

#### **2-106 OWNERS TO COMPLY WITH REGULATIONS.**

Any owner of any animal shall also meet any requirements for the reporting of animal bites, the confinement of animals that have bitten persons, or any other duties prescribed by the Animal Control Officer through regulations issued to protect the public health.

#### **2-107 REPORTS OF VIOLATIONS BY VETERINARIANS.**

It shall be unlawful for any veterinarian within the City to fail to report to the Animal Control Officer the examination or treatment of any animal that is owned or maintained in violation of this Chapter.

#### **2-108 ANIMALS IN PUBLIC PLACES PROHIBITED.**

No animals shall be allowed to enter any theater, store, or other public building in the City, whether accompanied by its owner or person in charge or otherwise, except with the approval of the building's owner or City Administrator. Dogs trained to assist the blind, deaf, or handicapped are exempt from this section.

#### **2-109 REMOVAL OF ANIMAL FECES REQUIRED.**

The owner of any animal, when such animal is off the owners property, shall be: responsible for the removal of any feces deposited by such animal on public walks, streets, recreation areas, or private property and it shall be a violation of this provision for such owner to fail to remove or provide for the removal of such feces before taking such animal from the immediate, area where such defecation occurred.

#### **2-110 REMOVAL AND DISPOSAL OF DEAD ANIMALS.**

- a. The Animal Control Officer shall be responsible for the removal of any dead, small animals found within the city on public property, except as otherwise provided in this chapter. In this chapter, the term "dead, small animal" shall exclude any animal lawfully and humanely killed for food.
- b. No person having in his possession any dead animal shall permit the same in or upon any private or public place without at once, upon the death or the discovery of the animal, giving notice to the Animal Control Officer.
- c. Large, dead animals shall be removed and appropriately disposed of by the owner or proprietor of the premises promptly after the death or discovery of such animal. If not so removed or properly disposed of, such animal shall be removed by the Animal Control Officer at actual cost to the property owner or proprietor.

## **2-110a CUSTODY AND DISPOSITION OF ANIMALS.**

- a. Any public health officer, law enforcement officer, or licensed veterinarian, or any officer or agent of any duly incorporated humane society, animal shelter, or other appropriate facility, may take into custody any animal, upon either private or public property, which clearly shows evidence of cruelty to animals, as defined in the Uniform Public Offense Code. Such officer, agent, or veterinarian may inspect, care for or treat such animal, or place such animal in the care of a duly incorporated humane society or licensed veterinarian for treatment, boarding, or other care or, if it appears, as determined by an officer of such humane society or by such veterinarian, that the animal is diseased or disabled beyond recovery for any useful purpose, for humane killing.
- b. The owner or custodian of an animal killed pursuant to subsection a. shall not be entitled to recover damages for the killing of such animal unless the owner proves that such killing was unwarranted.
- c. Expenses incurred for the care, treatment, or boarding of any animal, taken into custody pursuant to subsection a., pending prosecution of the owner or custodian of such animal for the crime of cruelty to animals, as defined in the Uniform Public Offense Code, shall be assessed to the owner or custodian as a cost of the case if the owner or custodian is adjudicated guilty of such crime.
- d. If a person is adjudicated guilty of the crime of cruelty to animals, as defined in the Uniform Public Offense Code, and the court having jurisdiction is satisfied that an animal owned or possessed by such person would be in the future subjected to such crime, such animal shall not be returned to or remain with such person. Such animal may be turned over to a duly incorporated humane society or licensed veterinarian for sale or other disposition.

## **2-111. PROHIBITED ANIMALS.**

It shall be unlawful to keep, harbor, own, or in any way process within the corporate limits of the City:

- a. Any warm blooded, carnivorous, omnivorous, wild, or exotic animal, defined herein;
- b. All poisonous snakes, reptiles, and animals, including lizards, snakes, and rear-fang snakes;
- c. Any fowl, other than domestic chickens and pigeons, within the City limits is hereby prohibited, except for caged birds kept as pets within residence structure;
- d. Roosters;
- e. Any exotic animal such as but not limited to:
  - Badgers, raccoons, and skunks;
  - Bears;
  - Bobcats, lynxes, pumas, cougars, mountain lions, and panthers;
  - Crocodilians, 30 inches in length or more;
  - Elephants, hippopotami, and rhinoceroses;

- Game cocks and other fighting birds;
- Jaguars, leopards, lions, tigers, cheetahs, and hyenas;
- Ostriches, emus, and rheas;
- All animals of the order Primate, including new world and old world monkeys and apes, which includes, but is not limited to, monkeys, chimpanzees, gibbons, gorillas, orangutans, slamangs, and baboons;
- Constrictor snakes, eight feet in length or more;
- Swine, except pot-bellied pigs;
- Ungulates, including all members of the deer family, elk, antelope, moose, bovine, and bison; or
- Wolves, wolf hybrids, domesticated dogs hybridized with wild canines, and coyotes.

## **2-112 DANGEROUS AND VICIOUS ANIMALS.**

- a. It shall be unlawful for the owner or keeper of any cross or vicious animal of dangerous or vicious nature, capable of doing personal injury, to suffer or permit the same to run at large or escape from his possession.
- b. It shall be unlawful to own, keep, or harbor any dog known to be dangerous or of a vicious nature and upon complaint any dog is dangerous or of a vicious nature, a hearing shall be held in the municipal court. If such dog is found to be dangerous or of a vicious nature, the municipal court shall order the same forthwith destroyed.
- c. **Complaints.** A written and signed complaint must be made to the City of Cherryvale that identifies the dangerous or vicious animal and the animal's owner.
- d. **Notice.** The owner of the complained of animal shall be served a notice of such complaint. The person shall be advised at least five days in advance by the City of the time and place of the hearing. The notice shall be delivered either by certified mail, postage prepaid, return receipt requested, or personally served by the Animal Control Officer or a law enforcement officer.
- e. **Hearing.** A hearing shall be held by the municipal court after the filing of the complaint.
- f. An animal that bites any person shall be prima facie evidence that the animal is vicious or dangerous.
- g. At the hearing, the municipal court shall have the authority to declare the animal vicious because of the inherently dangerous nature of the animal as to persons, its history of attack or wounding of persons, the seriousness of these attacks or wounds, and its potential not to inflict wounds in the future.
- h. **Penalties.** Declaration of animal as vicious or dangerous shall be grounds for the impoundment and humane euthanizing of the animal. Unless, without danger to the public, the animal can be and is removed from the City within forty-eight (48) hours or the owner

shall post suitable bond in the sum of five hundred dollars (\$500.00) that the animal will not be allowed to run at large.

**2-112a EXCEPTIONS.**

Any person who meets any of the following exceptions shall be permitted to own or keep an animal described in Section 2-112 provided that such person has first properly obtained a permit for the animal as provided in Section 2-112b:

- a. The keeping of such animals in zoos, bona fide educational or medical institutions, museums, or any other place where they are kept as live specimens for the public to view or for the purpose of instruction or study;
- b. The keeping of such animals for exhibition to the public by a circus, carnival, or other exhibit or show;
- c. The keeping of such animals in a bona fide, licensed veterinary hospital for treatment;
- d. Commercial establishments possessing such animals for the purpose of sale or display;
- e. A K9 therapy dog registered with Therapy Dogs International, Inc.;
- f. The keeping of any snakes of the species boa constrictors, Madagascar ground boas, green and yellow anacondas, Cuban boas, Indian pythons, reticulated pythons, African rock pythons, Amethystine pythons, Boelen's pythons, and all members of the family pythonidae that exceed six feet in length, provided that such snakes:
  1. Are not openly displayed in a public setting outside of established forums for such practices to include herpetological shows, educational displays, pet stores, and other special displays whereby members of the public are forewarned that snakes may be displayed in the open;
  2. When transported are transported in a manner that precluded escape. At a minimum, such snakes shall be placed in a sturdy cloth bag free of holes or tears with the bag placed in a box or similar container. The box or container must be locked or sealed during transportation;
  3. When housed, are housed in secure cages with hinged tops or doors or a sliding glass front that includes a locking mechanism. The cage shall be kept in a room modified to prevent snake escapes and the doors to such room shall be kept shut or locked when not occupied by the owner;
  4. Are not owned or kept by minors;
  5. Are not fed or in any fashion provided any live or living creature while observable by any member of the public or in any manner which may otherwise violate the humane laws of the City;
  6. The transportation of dangerous animals through the city when the person transporting such animals has taken adequate safeguards to protect the public and has notified the Chief of Police of the proposed route of transportation and the time thereof;



7. The keeping of any dangerous animal by the City or its designees in the enforcement of this chapter.

#### **2-112b SPECIAL PERMIT REQUIRED.**

A special annual permit shall be required for owning or keeping dangerous animals under Section 2-112. Permits shall be issued only to adults and only to the person who is the owner or keeper of the animal. Permits shall be granted according to the following procedures:

- a. The application shall contain the following information:
  - The name, address, and telephone number of the applicant;
  - A statement that the applicant is the owner or the keeper of the animal;
  - The name, address, and telephone number of any other owner or keeper of the animal;
  - The address of the location where the animal will be kept;
  - A general description of the animal for which the permit is sought;
  - An acknowledgement of receipt of a copy of this ordinance;
  - A signature by each owner or keeper of the animal.
  
- b. The application shall be accompanied by:
  - At the time of the initial application, the owner or keeper must present proof to the City Clerk of the required insurance. At the time of any subsequent application, the owner or keeper must show proof of insurance for the present application period and proof that there was insurance coverage throughout the period for the previous year. In the event such liability insurance is cancelled, lapsed, or for any other reason becomes non-enforceable, the owner or keeper shall be in collation of the provisions of this chapter;
  - Two identical color photographs of the animal taken within the previous thirty (30) days clearly showing the color and approximate size of the animal;
  - Photo identification of each owner or keeper of the animal.

#### **2-112c PENALTIES.**

Any owner, keeper, or person who harbors, or has care of, a dangerous animal shall be solely responsible for any injuries or death of a human or animal, including but not limited to, hospital and/or veterinarian bills, and property damage. Court fines and possible jail time may also be imposed if so ordered by the court.

#### **2-113 KEEPING OF LIVESTOCK.**

- a. No livestock, including but not limited to horses, mules, cattle, sheep, goats, and swine, shall be owned or maintained within the corporate city limits, except as provided below:
  1. Horses which are used for riding purposes only may be stabled within the city limits, providing no more than one horse shall be kept per 1.5 acres of suitable contiguous pasture land. The pasture land must be approved by the Building Inspector. No shelter or barn shall be permitted closer than one hundred (100) feet from any occupied residential structure other than on the same tract, or within one hundred (100) feet of any lot line in any residential zoning district.

2. Bovine (beef and dairy cattle) shall be kept only where permitted by the zoning regulations. No more than a combination of two (2) cows, heifers, calves, and steers shall be kept for each acre of contiguous, grass land area. Bulls for the purpose of breeding shall not be pastured within the City limits. No shelter or barn shall be permitted closer than one hundred (100) feet from any occupied residential structure other than on the same tract, or within one hundred (100) feet of any lot line in any residential zoning district.
  3. No feeding or watering troughs, tanks, or animal waste material storage containers shall be located within one hundred (100) feet of a property line. All occupied stalls shall be cleaned at least once each day.
  4. Designated areas, for the purpose of health and sanitation, shall be under the supervision of the City Administrator or his/her designee. If at any time such designated areas become a nuisance or a fly-breeding or rat-infested area, the City Administrator or his/her designee shall have the authority to order the property cleaned and the horses and/or bovine removed until the nuisance is abated.
  5. Violators will be fined a minimum of \$100 and a maximum of \$500 for each day that they are in violation of this ordinance.
- b. Any person having or maintaining any livestock must comply with zoning and health regulations, and have his or her animals licensed by the City. The City Administrator shall establish any additional health regulations and set the fee schedule for licensing of stock animals.
  - c. The provisions of this section shall not apply to any person engaged in the selling, exhibiting or shipping of cows, calves, goats, horses, mules, or swine insofar as it may be necessary for such parties to bring such livestock into the City and keep the same in the City, for a period of not more than 12 hours, in the legitimate transaction of business.

#### **2-114 LIMITATION ON THE NUMBER OF ANIMALS OWNED.**

- a. It shall be unlawful for any person in charge of a residence to own more than four (4) dogs or four (4) cats, or any combination of such animals not exceeding four (4) in number, over the age of one hundred twenty (120) days at such residence, unless the residence or all of the dogs and cats kept therein are within one or more of the following exemptions:
  1. The residence is licensed as a commercial animal establishment;
  2. The residence is zoned, Light Industrial (I-1) or Heavy Industrial (I-2); or
  3. All dogs and cats are properly vaccinated and were owned and kept at that residence prior to May 6, 2002.
- b. It shall be unlawful for any person in charge of a residence to own more than ten (10) domestic chickens, or pigeons, or combination thereof;
- c. Any kennel, cattery or hobby breeding establishment shall be limited in size to no more than twenty (20) animals over one hundred twenty (120) days of age;
- d. A hobby breeder may reside only in I-1 Light Industrial and I-2 Heavy Industrial zoning

districts of the City, except that any hobby breeder residing in any residential zoning district of the City on May 6, 2002, shall be permitted to continue operation at such location, provided that the hobby breeder is in existence and continuously operated prior to May 6, 2002;

- e. Any cattery owner shall reside only in I-1 Light Industrial and I-2 Heavy Industrial zoning districts of the City, except any person operating a cattery in any residential zoning district of the City on May 6, 2002, shall be permitted to continue cattery operation at such location, provided that such cattery is in existence and continuously operated prior to May 6, 2002;
- f. Any kennel shall be located only in, I-1 Light Industrial and I-2 Heavy Industrial zoning districts of the City, except that any person operating a kennel for cats or dogs in any residential zoning district of the City on May 6, 2002, shall be permitted to continue kennel operations at such location, provided that such kennel is in existence and is continuously operated prior to May 6, 2002; or
- g. When animals in excess of the limits established by this chapter are found at a residence, all of the animals found at the residence may be removed by the Animal Control Officer and impounded, except that the person in charge of the residence may designate and retain up to those limits established in this chapter.

#### **2-115 LOCATION OF YARD HOUSING FOR ANIMALS.**

It shall be unlawful for any person to maintain any chicken coop, pigeon cote, or rabbit hutch within ten (10) feet from property line and fifty (50) feet from adjacent dwellings, schools, churches, or businesses. Any yard housing for animals and any yard enclosure shall be so constructed and maintained that any animal kept therein is securely confined and prevented from escaping therefrom.

#### **2-116 PROPER MAINTENANCE OF ANIMAL YARD STRUCTURES AND PENS REQUIRED.**

- a. It shall be unlawful for any person to keep or maintain any animal in any yard structure or area that is not clean, dry, and sanitary; free from debris and/or offensive odors that annoy any neighbor; and devoid of rodents and vermin.
- b. Excrement shall be removed daily from any pen or yard area where animals are kept, and if stored on the premises of any animal owner, shall be stored in adequate containers with fly-tight lids.
- c. All animal pens and yards shall be so located that adequate drainage is obtained, normal drying occurs, and standing water is not present.
- d. All earthen yards or runways wherein chickens are kept shall be spaded, then limed once every three (3) months from the month of April through the month of December. All structures or pens wherein chickens are kept shall be sprayed to control flies and other insects.
- e. All premises on which animals are kept shall be subject to inspection by the Animal Control Officer. If the Animal Control Officer determines from such inspection that the premises are not being maintained in a clean and sanitary manner, he shall notify the owner of the animals in writing to correct the sanitation deficiencies within twenty-four (24) hours after notice is served on him/her prior to filing a complaint in municipal court. Any animal kept

under any condition which could endanger the public's or animal's health or create a health nuisance may be impounded. Animals shall be released after fees are paid and cause for impoundment has been corrected.

#### **2-117 ANIMAL NUISANCE ACTIVITIES PROHIBITED.**

The owner of any animal shall take all reasonable measures to keep such animals from becoming a nuisance.

#### **2-118 EXCESSIVE ANIMAL NOISE PROHIBITED.**

It shall be unlawful for the owner of any animal to permit such animal to make excessive noise that disturbs a neighbor. If a summons is issued charging violation of this provision, a subpoena shall also be issued to the disturbed neighbor to testify to the disturbance under oath. The following definitions and conditions shall apply to this section:

- a. **Excessive Noise** means mean any animal noise which is so loud and continuous or untimely as to disturb the sleep or peace of a neighbor.
- b. **Neighbor** means any person residing in a residence structure which is within one hundred (100) yards of the property, on which the animal is owned.

#### **2-119 ANIMAL CARE AND ANIMAL CRUELTY.**

- a. It shall be unlawful cruelty to animals for any person to own any animal and:
  1. Fail to provide such sufficient and wholesome food; potable water; shade and protection from the weather, which shall include a structurally sound weatherproof enclosure large enough to accommodate the animal with adequate bedding, opportunity for exercise, veterinary care when needed to treat injury or illness unless the animal is instead humanely euthanized; or other care is needed for health or well-being of such kind of animal; or
  2. Abandon or leave any animal in any place. For the purpose of this provision, "abandon" means for the owner or keeper to leave any animal without demonstrated or apparent intent to recover or to resume custody; leave any animal for more than forty-eight (48) hours without providing for adequate food, potable water, and shelter for the duration of the absence; or turn out or release any animal for the purpose of causing it to be impounded; or
  3. Leave any animal unattended in a vehicle when such vehicle does not have adequate ventilation and temperature to prevent suffering, disability, or death to such animal.
- b. Any animal impounded for being kept in violation of this chapter may be humanely euthanized by the Animal Control Officer, if he deems it necessary to relieve suffering. The owner of any animal that is not euthanized shall be entitled to regain custody of such animal only after such custody is authorized by the Court. All expenses accrued for the treatment, care, or disposal of such animal shall be paid by the owner, whether or not he/she seeks to regain custody of such animal.
- c. No person shall willfully and wantonly kill, beat, cruelly ill-treat, torment, overload, overwork, or otherwise abuse any animal, or cause, instigate or permit any dog fights, cock fights, or other combat between animals or between animals and humans, nor shall any person

attend such unlawful exhibition or be umpire or judge at such.

- d. The operator of a motor vehicle which strikes any animal shall, as soon as possible, report the accident, to the Animal Control Officer or the Police Department and shall report the accident to the animal's owner, if the owner can be ascertained.
- e. No person shall expose any known poisonous substance whether mixed with food or not, so that the same shall be liable to be eaten by any animal, providing that it shall not be unlawful for a person to expose, on his own property, poison mixed with only vegetable substances, except for commercial exterminators.
- f. It shall be unlawful for any person to use a spring steel trap in the City limits except rat, mice, skunk, opossum, or mole traps.
- g. It shall be unlawful for any person to willfully kill any songbird or to molest the nest of such birds.
- h. No person shall, without the knowledge or consent of the owner, hold or retain possession of any animal of which he is not the owner for more than twenty-four (24) hours without first reporting the possession of such animal to the Animal Control Officer.
- i. No performing animal exhibition or circus shall be permitted in which animals are induced or encouraged to perform through the use of chemical, mechanical, electrical, or manual devices in a manner which will cause or is likely to cause physical injury or suffering. All equipment used on a performing animal shall not harm or injure the animal.

#### **2-120 PROPER IDENTIFICATION OF DOGS AND CATS REQUIRED.**

It shall be unlawful for any person owning any cat or dog to permit such animal to be outside the residence structure of such owner without a current City registration tag attached to the collar or harness of such animal. It shall be unlawful for any person to permit a City registration or rabies vaccination tag to be worn by any animal other than the animal for which such tag is issued.

#### **2-121 RABIES VACCINATION OF CATS AND DOGS.**

Any person owning any cat or dog over one hundred twenty (120) days of age shall be required to have such animal currently immunized against rabies. For the purpose of this section, "currently immunized or vaccinated against rabies" shall mean that such cat or dog has been inoculated against rabies by a licensed veterinarian within the past twenty-four (24) months and such cat has been inoculated against rabies by a licensed veterinarian within the past twelve (12) months; however, dogs under six (6) months of age which are inoculated must receive a second rabies inoculation within twelve (12) months. This section shall apply to any cattery breeder duly licensed under the provisions of this chapter.

#### **2-122 EMERGENCY TREATMENT OF SICK OR INJURED CATS AND DOGS.**

- a. Any sick or injured cat or dog found at large in the city wearing a current City registration or rabies vaccination tag shall be taken at once by the Animal Control Officer or any police officer to a veterinarian for examination and treatment and the owner of such animal shall be promptly notified. All charges for veterinary services shall be borne by such owner.

- b. Any sick or injured cat or dog found at large in the City without such identifying tag or tattoo shall be examined at once by the Animal Control Officer and held at the animal shelter or animal hospital as defined in this chapter.

**2-123 CONFINEMENT OF CATS AND DOGS IN HEAT.**

The owner of any female cat or dog shall, during the period that such animal is in heat, keep it securely confined and enclosed within a building except when off such person's premises briefly for toilet purposes.

**2-124 RUNNING AT LARGE.**

It shall be unlawful for the owner of any animal to permit such animal to run at large within the City at any time. Any animal shall be deemed running at large when such animal is not inside a residential structure, secure fence, pen, on a leash held by a person capable of controlling such animal, or tethered in such a manner as to prevent it getting onto public rights-of-way or another's property. This provision shall not apply to domestic pigeons or to cats, which shall, however, be kept under reasonable restraint to prevent such nuisance activities.

**2-125 GUARD DOGS.**

- a. Any person owning a trained guard dog (for the purpose of this provision, meaning a dog used to guard public or private property) in the City shall register such dog with the Chief of Police who shall verify that such animal is confined in a manner that will not endanger persons not on the premises guarded.
- b. A conspicuous notice shall be posted on the premises where any guard dog is kept to warn persons of the nature of the dog therein confined.
- c. Any person operating a guard dog service in the City shall register such business with the Chief of Police and shall list all premises to be guarded with the Chief of Police before such service begins.

**2-126 REGISTRATION OF CATS AND DOGS.**

- a. It shall be the duty of any person owning in the City any cat or dog over one hundred twenty (120) days of age to register such cat or dog with the City Clerk or his/her designee. The City Clerk may delegate authority to the Animal Control Officer to enforce any sections of this Chapter requiring registration.
- b. Any other section of this Chapter notwithstanding, the registration provision of this section, shall not apply to any nonresident owner of any cat or dog while such person is passing through the City, provided such cat or dog shall remain on a leash or otherwise effectively restrained while within the City.
- c. The registration fees for cats and dogs shall be determined by separate ordinance. As proof of neutering and/or tattooing, an applicant shall present to the City Clerk a validation signed by a licensed veterinarian. No registration fee shall be charged to any owner of a dog trained as being used as a seeing eye or hearing dog.

- d. Registration shall be accomplished at the office of the City Clerk, either in person or by mail, at any time during the year that a cat or dog reaches the age of required registration, within thirty (30) days after an owner acquires a cat or dog of required registration age, or within thirty (30) days after a person owning, a cat or dog of required registration age moves into the City.
- e. The City Clerk shall issue a license to said owner upon presentation of.
  - 1. A certificate of vaccination issued by a licensed veterinarian; and
  - 2. Payment of the prescribed registration fees, per current ordinance.
- f. All cats and dogs so owned in any household shall be registered in the name of the same household head.
- g. The receipt issued for the registration shall constitute a certificate of registry and evidence of authorization for the keeping of such cat or dog within the City, until December 31<sup>st</sup> of that calendar.
- h. At the time of the issuance of any certificate of registry, the City Clerk shall deliver therewith a registration tag bearing the registration number of such certificate. The tag shall be kept on the animal as required by this Chapter. A replacement tag shall be furnished by the City Clerk to any registrant upon application satisfactory to the City Clerk and payment of a fee to be established by separate ordinance. Upon change of animal ownership, any person acquiring any cat or dog currently registered with the city shall apply to the City Clerk to transfer such registration to his name and no fee shall be charged.
- i. The City Clerk shall keep on file a copy of all certificates of registry issued within the preceding thirty-six (36) months. Such certificates shall include, but not be limited to, the following information:
  - 1. The owner's name, address and telephone number;
  - 2. A description of the cat or dog, including name, breed, color, age, weight, sex, and neutered or unneutered status;
  - 3. The number of the registration certificate and tag issued; and
  - 4. The expiration date of the registration.
- j. The City Clerk shall provide duplicate registration records to the Animal Control Officer, which shall include monthly reports of new registrations and reports of licenses issued to commercial animal establishments.

#### **2-127 LICENSES AND REGISTRATION; DENIAL, REVOCATION, REINSTATEMENT.**

- a. Withholding or falsifying information on an application for a license or registration required by this chapter shall be grounds for denial or revocation of such license or registration.
- b. Any person having been denied a license or registration may not reapply for a period of thirty (30) days. Each reapplication shall be accompanied by a fee established by ordinance.

- c. No person who has been convicted of cruelty to animals shall be issued a registration or a license.
- d. It shall be a condition of the issuance of any license or registration that the Animal Control Officer shall be permitted to inspect all animals and all premises where animals are kept at any time and shall, if permission for such inspection is refused, revoke the license or registration.
- e. Any license or registration issued shall be subject to revocation in the event such license or registration, or if the activity licensed becomes a nuisance, health hazard, or detriment to the safety and welfare of residents of the City.
- f. Any person whose license or registration is revoked shall, within ten (10) days thereafter surrender any animal owned or kept to the Animal Control Officer, who shall determine its disposition, and no part of the license or registration fee shall be refunded.
- g. The City Administrator may revoke any license or registration upon ten (10) days' notice to licensee or registrant. No license or registration shall be revoked, except after a hearing which date and time shall be specified in the notice.
- h. Any person aggrieved by the denial or revocation of a license or registration may appeal to the governing body upon written statements within ten (10) days of said revocation or denial, which body may, upon a hearing and reasonable notice to interested parties, either issue, reinstate or affirm the denial of such license or registration.

## **2-128 LICENSING OF COMMERCIAL ANIMAL ESTABLISHMENTS.**

- a. It shall be unlawful for any person, either as owner or agent, representative, employee or bailee or an owner, to operate a commercial animal establishment without being licensed for that activity. Any person desiring to obtain or annually renew a license to operate a commercial animal establishment shall file an application with the City Clerk and pay the appropriate fee, as prescribed by resolution.
- b. No license fee shall be required of the City animal shelter. No license fee shall be required of any animal hospital.
- c. Upon the receipt of the license application and fee, the City Clerk shall refer such application to the Animal Control Officer, who shall investigate the premises and file a written report and recommendation with the City Clerk. If the application is approved by the Animal Control Officer and the Planning and Zoning Commission, the Council shall issue the applicant a license to operate the activity under such conditions as the Animal Control Officer and the Planning and Zoning Commission shall specify in the report.
- d. All licenses shall expire on December 31<sup>st</sup> at midnight. The licensee shall then apply to the City Clerk for the license renewal at least thirty (30) days prior to the license expiration date to assure continuous licensing.
- e. Any person for the first time beginning to operate a commercial animal establishment shall pay the applicable license fee at least thirty (30) days prior to the start of such operation.
- f. Licenses for commercial animal establishments shall not be transferable.



## **2-129 IMPOUNDMENT; NOTIFICATION OF CAPTURE AND IMPOUNDMENT.**

- a. A law enforcement officer or the animal control officer or his assistant who seizes an animal found at large within the city or who seizes any animal found unlawfully kept, harbored, tethered, or maintained within the city, or upon the order of the municipal judge, shall forthwith impound the animal in the city animal shelter. If the animal is registered or tagged so as to be identified, the owner thereof shall be notified of the impoundment as soon as possible.
- b. The Municipal Judge shall have the authority, upon the sworn complaint of a law enforcement officer or the City Attorney, charging that an animal is maintained in violation of this chapter or is being cruelly or inhumanely treated, to issue an order to the Police Chief requiring the described animal to be seized and impounded pending final determination of the matter. In the event of the person so charged being found guilty of such charge, the costs of maintaining such animal may be assessed against him as a reasonable administrative expense of the action, and in the event of the person so charged being found innocent of such charge, the costs of maintaining the animal shall, before the return of such animal, be assessed against and paid by the city.
- c. Upon the taking and impoundment of any cat or dog wearing a current City registration or rabies vaccination tag, the Animal Control Officer shall notify the owner of such animal of its impoundment and conditions under which the animal can be recovered. Such notice shall be given by telephone or in writing within forty-eight (48) hours of the impoundment of such animal.
- d. No person shall:
  1. Willfully obstruct, hinder, or prevent the impounding of any animal;
  2. Break open, destroy, or damage the City animal shelter;
  3. Without proper authority, take or drive, or attempt to take or drive, any impounded animals from the City animal shelter; or
  4. Drive or entice any animal from beyond the city limits into the city limits or aid, abet, or assist in so doing, or let any animal out of any enclosure in which it may be confined, or unfasten any or aid, abet, or assist in so doing, in order that such animal may be seized and impounded.

## **2-130 PROSECUTION FOR VIOLATIONS AUTHORIZED.**

The owner of any impounded animal who does not recover such animal may still be prosecuted for violation of any provision of this Chapter.

## **2-131 TIME PERIOD FOR HOLDING ANIMALS.**

- a. The owner of any impounded cat or dog properly identified as prescribed in Section 2-129 of this code shall be given three (3) business days to recover such animal. The owner of any impounded cat or dog not so identified shall be given three (3) business days to recover such animal. Exemptions to these holding periods shall be authorized when:
  1. Any cat or dog is given to be disposed of by its owner;
  2. Any owner, upon notification of impoundment, declares his intention not to recover such animal; or

3. Any cat or dog not having proper identification arrives at the animal shelter in such a condition that, in the judgment of the Animal Control Officer, compassion requires that such animal be promptly and humanely euthanized.
- b. The owner of any animal given to the Animal Control Officer to be disposed of shall be required to make payment of a fee established by separate ordinance.
- c. Any cat or dog not recovered by its owner within the prescribed holding period shall become the property of the City and may be adopted, transferred to a duly incorporated humane society, or humanely euthanized.

#### **2-132 PROCEDURE AND FEES FOR RECOVERY OF ANIMALS.**

- a. Any owner of an impounded dog or cat shall be entitled to recover such animal if, within the prescribed holding period; such person shall appear to claim such animal and shall make payment of the required fees. The required fees shall be established by separate ordinance.
- b. If an owner cannot validate current rabies immunization for his animal, then such owner shall, within three (3) business days, accomplish such vaccination with a licensed veterinarian or shall be issued a summons for violation of this provision. Violating this provision will call for the owner or adoptee to pay for the vaccination.
- c. Any owner of any cat or dog impounded more than one time within a twelve-month period shall be responsible for paying all applicable fees, and shall be issued a summons.

#### **2-133 PROCEDURES FOR ADOPTING ANIMALS.**

- a. Any cat or dog not recovered by its owner within the prescribed holding period may be offered for adoption by a new adult owner.
- b. The City Clerk's Office shall collect such fees for animal adoption as are established by separate ordinance.
- c. Such rabies vaccination as is prescribed in this Chapter shall also be required.
- d. If any dog or female cat is under six (6) months of age, or any male cat is under ten (10) months of age, such owner shall agree in writing to return such animal at a specified place and date for neutering. Such owner shall be required to have such animal currently rabies immunized by a licensed veterinarian before neutering. Any neutering fee shall be forfeited by any owner who fails to accomplish such neutering within thirty (30) days after the specified neutering date."

#### **2-134 LICENSING OF GROOMING FACILITIES.**

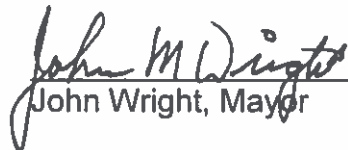
- a. It shall be unlawful for any person, either as owner or agent, representative, employee or bailee or an owner, to operate a Grooming Facility without being licensed for that activity. Any person desiring to obtain or annually renew a license to operate a Grooming Facility shall file an application with the City Clerk and pay the appropriate fee, as prescribed by ordinance.

- b. No license fee shall be required of the City animal shelter. No license fee shall be required of any animal hospital.
- c. Upon the receipt of the license application and fee, the City Clerk shall refer such application to the Animal Control Officer, who shall investigate the premises and file a written report and recommendation with the City Clerk. If the application is approved by the Animal Control Officer and the Planning and Zoning Commission, the Council shall issue the applicant a license to operate the activity under such conditions as the Animal Control Officer and the Planning and Zoning Commission shall specify in the report.
- d. All licenses shall expire on December 31<sup>st</sup> at midnight. The license shall then apply to the City Clerk for the license renewal at least thirty (30) days prior to the license expiration date to assure continuous licensing.
- e. Any person for the first time beginning to operate a Grooming Facility shall pay the applicable license fee at least thirty (30) days prior to the start of such operation.
- f. Licenses for Grooming Facilities shall not be transferable.

**REPEALED.** All ordinances in conflict herewith are hereby repealed.

**EFFECTIVE DATE.** This ordinance shall be in full force and effect upon its publication in the official city newspaper.

**PASSED AND APPROVED** By the Governing Body of the City of Cherryvale, Kansas this 4<sup>th</sup> day of September 2018.

  
John Wright, Mayor

ATTEST:

  
Karen Davis, City Clerk

